

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re)	Case No. 06-23737-C-7
)	
TIMOTHY MCDONALD and)	
TARAMARIE MCDONALD,)	MC No. LMT-1
)	
Debtors.)	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
ON MOTION FOR RELIEF FROM AUTOMATIC STAY NOT INTENDED FOR
PUBLICATION**

These findings of fact and conclusions of law, which are not intended for publication, are rendered in this contested matter pursuant to Federal Rules of Civil Procedure 52 as incorporated by Federal Rules of Bankruptcy Procedure 7052 and 9014.

Jurisdiction

Jurisdiction is founded upon 28 U.S.C. § 1334. This is a core proceeding. 28 U.S.C. § 157(b) (2) (G).

Findings of Fact

Debtors filed their voluntary chapter 7 petition on

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1 September 20, 2006. They scheduled real property commonly
2 known as 3221 Clark Street, Placerville, CA 95667 ("property")
3 as property of the estate. The first meeting of creditors was
4 held on October 20, 2006. The chapter 7 trustee filed a report
5 finding that there is no property available for distribution
6 from the estate over and above that exempted by the debtors.
7 Debtors were discharged from all dischargeable debts on January
8 5, 2007.

9 On November 30, 2006, AMC Mortgage Services, Inc.
10 ("movant") filed a motion, notice, and declaration requesting
11 that this court vacate the automatic stay to permit movant to
12 foreclose upon the property. According to movant, the fair
13 market value of the property is approximately \$379,000.00.
14 Movant has a lien on the property in the approximate amount of
15 \$360,085.18. According to debtors, there is another lien
16 against the property in the approximate amount of \$3,000.00.

17 No opposition to the motion was filed within the time
18 prescribed by Local Bankruptcy Rule 9014-1(f)(1). The parties
19 have consented to taking evidence by affidavit and have not
20 demonstrated that there is any disputed material factual issue.
21 See L. Bankr. R. 9014-1(f)(1). The evidentiary record is
22 closed. Id.

23 Upon review of the record, the court determined that
24 the written record is adequate and that no oral argument is
25 necessary.

26
27 Conclusions of Law

28 The automatic stay of acts against debtor in personam

1 expires when the debtor is granted a discharge. 11 U.S.C.
2 § 362(c)(2)(C). Acts against property of the estate remain
3 stayed until the earliest of the time when the bankruptcy case
4 is closed, dismissed, or the property ceases to be property of
5 the estate. 11 U.S.C. § 362(c). The automatic stay may be
6 terminated earlier if debtor fails to protect the secured
7 party's interest adequately, § 362(d)(1), and, with respect to
8 a stay of an act against property, debtor does not have equity
9 in the property, § 362(d)(2)(A), and the property is not
10 necessary to an effective reorganization. 11 U.S.C. §
11 362(d)(2)(B). The issue of whether the property is necessary
12 to an effective reorganization is not considered in a chapter 7
13 case because no reorganization is contemplated in a chapter 7
14 case.

15 Although the debtors appear to have equity in the
16 property, since the debtors were granted a discharge, the
17 automatic stay has expired as to the debtors. Thus, the motion
18 insofar as it is directed at the interest of the debtors is
19 moot and will be denied. The debtors are deemed to be the
20 prevailing parties under Cal. Civ. Code § 1717.

21 However, the motion will be granted as to the interest
22 of the trustee.

23 An appropriate order will issue.

24 Dated: January 18, 2007

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26 
27 UNITED STATES BANKRUPTCY JUDGE
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CERTIFICATE OF SERVICE

On the date indicated below, I served a true and correct copy(ies) of the attached document by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed and by depositing said envelope in the United States mail or by placing said copy(ies) into an interoffice delivery receptacle located in the Clerk's Office.

Timothy and TaraMarie McDonald
3221 Clark Street
Placerville, CA 95667

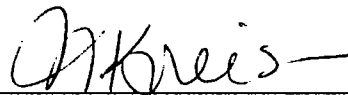
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Dated: 1-18-07



Deputy Clerk